

alc 74-1215



DEPARTMENT OF STATE

Washington, D.C. 20520

APR 25 1974

Honorable Roy L. Ash  
Director  
Office of Management  
and Budget  
Washington, D.C. 20503

Dear Mr. Ash:

Mr. Hyde's Legislative Referral Memorandum of January 21, 1974, requested the views of the Department of State on a bill proposed by CIA "To amend the National Security Act of 1947, as amended, and for other purposes."

The Department of State recognizes the concern of CIA for protection of information relating to intelligence sources and methods which has led to the submission of the proposed bill. In working with CIA and the Department of Justice in the case of Alfred A. Knopf, Inc. et al. v. William Colby et al., U.S. District Court for the Eastern District of Virginia (Civ. No. 540-73-A), we have been very much aware of the difficulty of protecting such information under existing legislation even with respect to former employees who have a contractual obligation not to disclose classified information. The Department, in its comments to the Department of Justice on S. 1400, also endorsed certain amendments to existing criminal law on national security information. Sections 1122-1126 are the pertinent sections of S. 1400. It would still be the preference of this Department that this problem be the subject of general legislation in the context of an overall revision of the Federal Penal Code. We do not believe CIA's problems are that much different from those of other national security agencies, and that seeking special legislation is not desirable. In addition, because of the publicity given the Knopf case and CIA's efforts to prevent publication of the manuscript there, the CIA bill, which has already been referred to extensively in the litigation, is likely to act as a lightning rod for Congressional opponents of restrictions of this kind.

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We would defer to the Justice Department as to whether going forward with the CIA bill while an appeal is pending on the Knopf case would be prejudicial to the appeal.

Beyond these general comments, there are two particular concerns of the Department of State with this bill. The first concern relates to the responsibility of Ambassadors at the direction of the President to direct and coordinate the activities and operations of all elements of the United States Diplomatic Mission. Subsection (g) (1) and (2) appear to give the Director of CIA broad authority to restrict dissemination of information relating to intelligence sources and methods and to define the information so restricted. The Department would oppose any application of these provisions to limit dissemination of intelligence information to the Ambassador which the latter considered necessary to discharge his responsibilities. We would suggest a formula found in other legislation to avoid any such implication; that is, to insert the words "under the policy direction of the President" before "by the Director of Central Intelligence" in subsection (g) (2).

The other concern is with the proposal in the bill (section (g) (5)) to authorize in camera review of the intelligence information itself. While we believe it is desirable to have the standard in the bill of arbitrary and capricious designation being the standard to be applied by the court, we do not believe that this is a desirable time to advocate in camera judicial review of classified information. While to us it may be distinguishable as pertaining to a criminal action, going forward here may be interpreted by others as indicating that in camera inspection would be no great problem under pending amendments to the Freedom of Information Act. We believe that for the Government as a whole, in camera examination of classified documents endangers protection of security and that no affirmative action should be taken to expand its application.

Sincerely yours,

Linwood Holton  
Assistant Secretary  
for Congressional Relations